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REPORT OF THE PREPARATORY COMMITTEE ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

Addendum

PART THREE

DRAFT RULES OF PROCEDURE FOR THE UNITED NATIONS DIPLOMATIC CONFERENCE OF PLENIPOTENTIARIES ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

CONTENTS

Rule		Page
	CHAPTER I - REPRESENTATION AND CREDENTIALS	4
1.	Composition of delegations	4
2.	Alternates and advisers	4
3.	Submission of credentials	4
4.	Credentials Committee	4
5.	Provisional participation in the Conference	4
	CHAPTER II - OFFICERS	5
6.	Elections	5
7.	General powers of the President	5
8.	Acting President	5
9.	Replacement of the President	5
10.	Voting rights of the President	6
	CHAPTER III - GENERAL COMMITTEE	6
11.	Composition	6

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12. Substitute members 6

CONTENTS (continued)

Rule | Page

13. Functions 6
CHAPTE IV - SECRETARIAT 6
14. Duties of the Secreta y-General 6
15. u ies of the secretariat 7
16. Statem nts by the secretariat 7
CHAP ER V - OPENING OF THE CONFERENCE 7
17. Temporary President 7
18. Decisions concerning organization 7
CHAPTER VI - CONDUCT OF BUSINESS 8
19. Qu rum 8
20. peeches 8
21. Precedence 8
22. Points of ord r 8
23. Closing of the list of speakers 9
24. Right of reply 9
25. Adjournment of deb te 9
26. Closure of debate 9
27. Suspension or adjournme t of the meeting 9
2 . rder of motions 10
29. as c proposal 10
30 Other proposals 10
31. Withdrawal of proposals and motions 10
32. Decisions o competence 10
33. Reconsideration of proposals 11
HAPTER VII - DECISION-TAKING 11
34. Gen ra agreement 11
35. Voting rights 11
36. Majority required 1
37. Meaning o t e expression "re resentatives present and voting" ... 11
38. Method of voting 12
39. Conduct during voting 12
4 . Explanation of v te 12

CONTENTS (continued)

Rule		Page
41.	Division of proposals	12
42.	Amendments	13
43.	Decisions on amendments	13
44.	Decisions on proposals	13
45.	Elections	13
46.	Elections	13
47.	Elections	14
	CHAPTER VIII - SUBSIDIARY BODIES	14
48.	Committee of the Whole	14
49.	Drafting Committee	14
50.	Other subsidiary bodies	15
51.	Officers	15
52.	Officers, conduct of business and voting	15
	CHAPTER IX - LANGUAGES AND RECORDS	16
53.	Languages of the Conference	16
54.	Interpretation	16
55.	Languages of official documents	16
56.	Records and sound recordings of meetings	16
	CHAPTER X - PUBLIC AND PRIVATE MEETINGS	16
57.	Plenary meetings and meetings of the Committee of the Whole	16
58.	Meetings of other subsidiary bodies	17
59.	Communiqués on private meetings	17
	CHAPTER XI - OBSERVERS	17
60.	Representatives of organizations and other entities that have received a standing invitation from the General Assembly pursuant to its relevant resolutions to participate, in the capacity of observers, in its sessions and work	17
61.	Representatives of other regional intergovernmental organizations	17
62.	Representatives of other international bodies	17
63.	Representatives of non-governmental organizations	17
64.	Written statements	18
	CHAPTER XII - AMENDMENTS TO THE RULES OF PROCEDURE	18
65.	Method of amendment	18

DRAFT PROVISIONAL RULES OF PROCEDURE

CHAPTER I

Representation and credentials

Rule 1. Composition of delegations

The delegation of each State participating in the Conference shall consist of a head of delegation and such other accredited representatives, alternate representatives and advisers as may be required. Unless otherwise specified, the term "representative" in chapters I to X and XII refers to a representative of a State.

Rule 2. Alternates and advisers

The head of delegation may designate an alternate representative or an adviser to act as a representative.

Rule 3. Submission of credentials

The credentials of representatives and the names of alternate representatives and advisers shall be submitted early to the Executive Secretary and, if possible, not later than 24 hours after the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs.

Rule 4. Credentials Committee

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Rule 5. Provisional participation in the Conference

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

CHAPTER II

Officers

Rule 6. Elections

The Conference shall elect the following officers: a President and [22] Vice-Presidents, as well as the Chairman of the Committee of the Whole provided for in rule 48 and the Chairman of the Drafting Committee provided for in rule 49. These officers shall be elected on the basis of ensuring the representative character of the General Committee, taking into account in particular equitable geographical distribution and bearing in mind the adequate representation of the principal legal systems of the world. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

Rule 7. General powers of the President

1. In addition to exercising the powers conferred upon him or her elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, promote the achievement of general agreement, put questions to the Conference for decision and announce decisions. The President shall rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his or her functions, remains under the authority of the Conference.

Rule 8. Acting President

1. If the President finds it necessary to be absent from a meeting or any part thereof, he or she shall designate the Vice-President to take his or her place.

2. A Vice-President acting as President shall have the powers and duties of the President.

Rule 9. Replacement of the President

If the President is unable to perform his or her functions, a new President shall be elected.

Rule 10. Voting rights of the President

The President, or Vice-President acting as President, shall not vote in the Conference, but may appoint another member of his or her delegation to vote in his or her place.

CHAPTER III

General Committee

Rule 11. Composition

There shall be a General Committee consisting of [25] members, which shall comprise the President and Vice-Presidents, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. The President, or in his or her absence, one of the Vice-Presidents designated by him or her, shall serve as Chairman of the General Committee.

Rule 12. Substitute members

If the President or a Vice-President finds it necessary to be absent during a meeting of the General Committee, he or she may designate a member of his or her delegation to sit and vote in the Committee. In the case of absence, the Chairman of the Committee of the Whole shall designate a Vice-Chairman of that Committee as his or her substitute and the Chairman of the Drafting Committee shall designate a member of the Drafting Committee. When serving on the General Committee, a Vice-Chairman of the Committee of the Whole or member of the Drafting Committee shall not have the right to vote if he or she is of the same delegation as another member of the General Committee.

Rule 13. Functions

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the coordination of its work. It shall also exercise the powers conferred upon it by rule 34.

CHAPTER IV

Secretariat

Rule 14. Duties of the Secretary-General

1. The Secretary-General of the United Nations shall be the Secretary-General of the Conference. He, or his representative, shall act in that capacity in all meetings of the Conference and its subsidiary bodies.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its subsidiary bodies.

Rule 15. Duties of the secretariat

The secretariat of the Conference shall, in accordance with these rules:

(a) Interpret speeches made at meetings;

(b) Receive, translate, reproduce and distribute the documents of the Conference;

(c) Publish and circulate the official documents of the Conference;

(d) Prepare and circulate records of public meetings;

(e) Make and arrange for the keeping of sound recordings of meetings;

(f) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations; and

(g) Generally perform all other work that the Conference may require.

Rule 16. Statements by the secretariat

The Secretary-General or any other member of the staff of the secretariat who may be designated for that purpose may, at any time, make either oral or written statements concerning any question under consideration.

CHAPTER V

Opening of the Conference

Rule 17. Temporary President

The Secretary-General shall open the first meeting of the Conference and preside until the Conference has elected its President.

Rule 18. Decisions concerning organization

The Conference shall, to the extent possible, at its first meeting:

(a) Adopt its rules of procedure, the draft of which shall, until such adoption, be the provisional rules of procedure of the Conference;

(b) Elect its officers and constitute its committees;

(c) Adopt its agenda, the draft of which shall, until such adoption, be the provisional agenda of the Conference;

(d) Decide on the organization of its work.

CHAPTER VI

Conduct of business

Rule 19. Quorum

[The President may declare a meeting open and permit the debate to proceed when the representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.]

Rule 20. Speeches

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 21, 22 and 25 to 27, the President shall call upon speakers in the order in which they signify their desire to speak. The secretariat shall be in charge of drawing up a list of speakers.

2. Debate shall be confined to the question before the Conference and the President may call a speaker to order if his or her remarks are not relevant to the subject under discussion.

3. The Conference may limit the time allowed to each speaker and the number of times each delegation may speak on a question. Before such a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits, after which the motion shall be immediately put to the vote. In any event, unless otherwise decided by the Conference, the President shall limit each intervention on procedural matters to three minutes. When the debate is limited and a speaker exceeds the allotted time, the President shall call him or her to order without delay.

Rule 21. Precedence

The chairman or rapporteur of a committee or the representative of a working group may be accorded precedence for the purpose of explaining the conclusions arrived at by that committee or working group.

Rule 22. Points of order

During the discussion of any matter, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of

the President. The appeal shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Rule 23. Closing of the list of speakers

During the course of a debate, the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

Rule 24. Right of reply

1. Notwithstanding rule 23, the President shall accord the right of reply to any representative who requests it. A representative referred to in rules 60, 61 or 62 may be granted the opportunity to make a reply.

2. Replies made pursuant to this rule shall normally be made at the end of the last meeting of the day.

3. No delegation may make more than two statements under this rule at a given meeting.

4. The first intervention in the exercise of the right of reply for any delegation at a given meeting shall be limited to five minutes and the second intervention shall be limited to three minutes.

Rule 25. Adjournment of debate

A representative may at any time move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the adjournment, after which the motion shall, subject to rule 28, be put immediately to the vote.

Rule 26. Closure of debate

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his or her wish to speak. Permission to speak on the motion shall be accorded only to two speakers opposing the closure, after which the motion shall, subject to rule 28, be put immediately to the vote.

Rule 27. Suspension or adjournment of the meeting

Subject to rule 39, a representative may at any time move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall, subject to rule 28, be put immediately to the vote.

Rule 28. Order of motions

Subject to rule 22, the motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

(a) To suspend the meeting;

(b) To adjourn the meeting;

(c) To adjourn the debate on the question under discussion;

(d) To close the debate on the question under discussion.

Rule 29. Basic proposal

The draft convention on the establishment of an international criminal court transmitted by the Preparatory Committee on the Establishment of an International Criminal Court shall constitute the basic proposal for consideration by the Conference.

Rule 30. Other proposals

Other proposals shall normally be submitted in writing to the Executive Secretary, who shall circulate copies to all delegations. As a general rule, no proposal shall be considered at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The president may, however, permit the consideration of amendments, even though these amendments have not been circulated or have only been circulated on the same day.

Rule 31. Withdrawal of proposals and motions

A proposal or a motion may be withdrawn by its proposer at any time before a decision on it has been taken, provided that it has not been amended. A proposal or a motion that has thus been withdrawn may be reintroduced by any representative.

Rule 32. Decisions on competence

Subject to rules 22 and 28, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal submitted to it shall be put to the vote before the matter is discussed or a decision is taken on the proposal in question.

Rule 33. Reconsideration of proposals

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be put immediately to the vote.

CHAPTER VII

Decision-taking

Rule 34. General agreement

1. The Conference shall make its best endeavours to ensure that the work of the Conference is accomplished by general agreement.

2. If, in the consideration of any matter of substance, all feasible efforts to reach general agreement have failed, the President of the Conference shall consult the General Committee and recommend the steps to be taken, which may include the matter being put to the vote.

Rule 35. Voting rights

Each State participating in the Conference shall have one vote.

Rule 36. Majority required

[1. Subject to rule 34, decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

4. If a vote is equally divided, the proposal or motion shall be regarded as rejected.]

Rule 37. Meaning of the expression "representatives present and voting"

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative

vote. Representatives who abstain from voting shall be considered as not voting.

Rule 38. Method of voting

1. Except as provided in rule 45, the Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President. The name of each State shall be called in all roll-calls and its representative shall reply "yes", "no" or "abstention".

2. When the Conference votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call. Any representative may request a recorded vote, which shall, unless a representative requests otherwise, be taken without calling out the names of the States participating in the Conference.

Rule 39. Conduct during voting

The President shall announce the commencement of voting, after which no representative shall be permitted to intervene until the result of the vote has been announced, except on a point of order in connection with the process of voting.

Rule 40. Explanation of vote

Representatives may make brief statements, consisting solely of explanations of their votes, before the voting has commenced or after the voting has been completed. The President may limit the time to be allowed for such explanations. The representative of a State sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.

Rule 41. Division of proposals

A representative may move that parts of a proposal be decided on separately. If a representative objects, a decision shall be taken on the motion for division. Permission to speak on the motion shall be accorded only to two representatives in favour of and to two opposing the division. If the motion is carried, those parts of the proposal that are subsequently approved shall be put to the Conference for decision as a whole. If all operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 42. Amendments

1. A proposal is considered an amendment to another proposal if it merely adds to, deletes from or revises part of that proposal.

2. Unless specified otherwise, the word "proposal" in these rules shall be considered as including amendments.

Rule 43. Decisions on amendments

When an amendment is moved to a proposal, the amendment shall be decided on first. When two or more amendments are moved to a proposal, the Conference shall first decide on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been decided on. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to a decision. If one or more amendments are adopted, a decision shall then be taken on the amended proposal.

Rule 44. Decisions on proposals

1. If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, decide on the proposals in the order in which they were submitted. The Conference may, after each decision on a proposal, decide whether to take a decision on the next proposal.

2. Revised proposals shall be decided on in the order in which the original proposals were submitted, unless the revision substantially departs from the original proposal. In that case, the original proposal shall be considered as withdrawn and the revised proposal shall be treated as a new proposal.

3. A motion requiring that no decision be taken on a proposal shall be put to a decision before a decision is taken on the proposal in question.

Rule 45. Elections

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 46. Elections

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 47. Elections

1. When two or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of such places, obtaining in the first ballot a majority of the votes of the representatives present and voting and the largest number of votes shall be elected.

2. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled, provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to candidates who obtained the greatest number of votes in the third unrestricted ballot, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

CHAPTER VIII

Subsidiary bodies

Rule 48. Committee of the Whole

The Conference shall establish a Committee of the Whole. Its bureau shall consist of a Chairman, three Vice-Chairmen and a Rapporteur.

Rule 49. Drafting Committee

1. The Conference shall establish a Drafting Committee consisting of [21] members, including its Chairman who shall be elected by the Conference in accordance with rule 6. The other [20] members of the Committee shall be appointed by the Conference on the proposal of the General Committee, taking into account equitable geographical distribution as well as the need to ensure the representation of the languages of the Conference and to enable the Drafting Committee to fulfil its functions. The Rapporteur of the Committee of the Whole participates *ex officio* without a vote, in the work of the Drafting Committee.

2. The Drafting Committee shall, without reopening substantive discussion on any matter, coordinate and refine the drafting of all texts referred to it, without altering their substance, formulate drafts and give advice on drafting

as requested by the Conference or by the Committee of the Whole and report to the Conference or to the Committee of the Whole as appropriate.

Rule 50. Other subsidiary bodies

The Committee of the Whole may set up working groups.

Rule 51. Officers

Except as otherwise provided in rule 6, each subsidiary body shall elect its own officers.

Rule 52. Officers, conduct of business and voting

[The rules contained in chapters II, VI and VII (except rule 34) above and IX and X below shall be applicable, *mutatis mutandis*, to the proceedings of subsidiary bodies, except that:

(a) The Chairmen of the General, Drafting and Credentials Committees may exercise the right to vote;

(b) The Chairman of the Committee of the Whole may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken;

(c) A majority of the representatives of the General, Drafting or Credentials Committee or of any working group shall constitute a quorum;

(d) The Committee of the Whole shall make its best endeavours to ensure that its work is accomplished by general agreement. The Chairman of the Committee of the Whole shall keep the President of the Conference informed of the progress of the work of the Committee. If, in the consideration of any matter of substance, all feasible efforts to reach general agreement have failed, the Chairman of the Committee of the Whole shall consult the other members of its bureau and recommend the steps to be taken, which may include the matter being put to the vote;

(e) Subject to subparagraph (d), decisions shall be taken by a majority of the representatives present and voting, except that the reconsideration of a proposal shall require the majority established by rule 33.]

CHAPTER IX

Languages and records

Rule 53. Languages of the Conference

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

Rule 54. Interpretation

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Conference if the delegation concerned provides for interpretation into one such language.

Rule 55. Languages of official documents

Official documents of the Conference shall be made available in the languages of the Conference.

Rule 56. Records and sound recordings of meetings

1. Summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole shall be kept in the languages of the Conference. As a general rule, they shall be circulated as soon as possible, simultaneously in all the languages of the Conference, to all representatives, who shall inform the secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The secretariat shall make sound recordings of meetings of the Conference, the Committee of the Whole and the Drafting Committee. Such recordings shall be made of meetings of other committees when the body concerned so decides.

CHAPTER X

Public and private meetings

Rule 57. Plenary meetings and meetings of the Committee of the Whole

The plenary meetings of the Conference and the meetings of the Committee of the Whole shall be held in public unless the body concerned decides otherwise. All decisions taken by the plenary of the Conference at a private meeting shall be announced at an early public meeting of the plenary.

Rule 58. Meetings of other subsidiary bodies

As a general rule, meetings of other subsidiary bodies shall be held in private.

Rule 59. Communiqués on private meetings

At the close of any private meeting, the chairman of the body concerned may issue a communiqué to the press through the Executive Secretary.

CHAPTER XI

Observers

Rule 60. Representatives of organizations and other entities that have received a standing invitation from the General Assembly pursuant to its relevant resolutions to participate, in the capacity of observers, in its sessions and work

Representatives designated by organizations and other entities that have received a standing invitation from the General Assembly pursuant to its relevant resolutions to participate, in the capacity of observers, in its sessions and work have the right to participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and subsidiary bodies established under rule 50.

Rule 61. Representatives of other regional intergovernmental organizations

Representatives designated by other regional intergovernmental organizations invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and subsidiary bodies established under rule 50.

Rule 62. Representatives of other international bodies

Representatives designated by other international bodies invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and subsidiary bodies established under rule 50.

Rule 63. Representatives of non-governmental organizations

Non-governmental organizations invited to the Conference may participate in the Conference through their designated representatives as follows:

(a) By attending plenary meetings of the Conference and, unless otherwise decided by the Conference in specific situations, formal meetings of the Committee of the Whole and of subsidiary bodies established under rule 50;

(b) By receiving copies of official documents;

(c) Upon the invitation of the President and subject to the approval of the Conference, by making, through a limited number of their representatives, oral statements to the opening and closing sessions of the Conference, as appropriate.

Rule 64. Written statements

Written statements submitted by the designated representatives referred to in rules 60 to 63 shall be made available by the secretariat to delegations in the quantities and in the language or languages in which the statements are made available to it at the site of the Conference, provided that a statement submitted on behalf of a non-governmental organization is related to the work of the Conference and is on a subject in which the organization has a special competence. Written statements shall not be made at United Nations expense and shall not be issued as official documents.

CHAPTER XII

Amendments to the Rules of Procedure

Rule 65. Method of amendment

These Rules of Procedure may be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting.